

January 21, 2016

Professor Frann Michel
President, Willamette University AAUP Chapter
Willamette University
Salem, Oregon 97301

Dear Professor Michel:

You have asked for our comments on the Willamette University College of Law, and the Atkinson Graduate School of Management faculty handbooks. The versions you sent us to review are respectively the February 2000, and April 2014, versions.

I have commented on sections of these documents which most implicate AAUP-recommended standards in the areas of academic freedom, tenure, due process, and shared governance, and I have limited my observations mainly to noting departures from key AAUP-supported standards.

I find that the regulations outlined in the WU law and management handbooks comport with Association-supported standards in the main. I have noted, however, a few important departures from our recommendations to which I want to draw your attention and that of your colleagues. I cite them in the order in which they appear, first in the law, and then in the management, handbooks.

College of Law

IV.A. Visiting Appointments and IV.B. Adjunct Appointments.

Section IV.A. states, “[a] visiting full-time appointment shall be for a specified period of time. Contracts for visiting appointments shall specify the term of the appointment, and notice of non-reappointment is not require.”

Section IV.B. states, “Adjunct appointments may be offered when the appointee is assigned less than a normal load during a given academic year Adjunct contracts may be for one or more terms of the academic year and are renewable.”

According to our *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*, “except for special appointments clearly designated at the outset as involving only a brief association with the institution, all full-time faculty appointments are either with continuous tenure or probationary for tenure.” The 1940 *Statement of Principles on Academic Freedom and Tenure* provides, “After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause. . . .” As you know, the AAUP therefore does not favor retention of full-time faculty members beyond seven years of service without affording them the due-process protections that accrue with tenure. Therefore, we strongly encourage institutions to limit strictly their reliance upon contingent faculty appointments.

VII. Termination of Regular Appointment.

Although this section refers to “termination” procedures, the general language appears to relate to *dismissal* procedures. Notwithstanding the fact that both types of actions have as their ultimate goal ending a faculty appointment, there are significant differences among the two under AAUP policy. We use “dismissal” to denote the termination of an appointment for cause, i.e. something the faculty member did, such as gross misconduct. Before a faculty member can be dismissed, these procedures require, among other measures, that the administration bear the burden of demonstrating, in an adjudicative hearing of record before an elected faculty body, that adequate cause for dismissal exists based on clear and convincing evidence in the record considered as a whole.

Although the AAUP “assumes that individual institutions will have formulated their own definitions of adequate cause for dismissal,” we do emphasize that adequate cause should “be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers” (see Regulation 5 of the attached *Recommended Institutional Regulations [RIR]*). Institutions that are cognizant of the need to protect tenure and academic freedom, furthermore, tend to employ terms such as “gross incompetence,” “moral turpitude,” or “serious misconduct,” thereby setting a rather high bar for what conduct might justify dismissal. In contrast, this section of the handbook is silent with respect to adequate cause.

By contrast, "termination" is used to describe procedures to end a faculty appointment before the end of its term for reasons unrelated to the fitness or actions of a faculty member. Under AAUP standards, termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of a specified term, may be effected for reasons such as the declaration of a demonstrably *bona fide* financial exigency or program discontinuance as set forth in *RIR* 4(c).

This section also appears to encompass nonreappointment (VII.A.7. "Demonstrated failure to make satisfactory progress toward promotion or tenure"). The AAUP recommends that, in order to ensure that reappointment, tenure, and promotion decision not be based on considerations violative of academic freedom or of governing policies forbidding discrimination, appeals procedures on these grounds be made available, in addition to appeals on grounds of procedural violations. The Association further recommends that such decisions not be the result of "inadequate consideration." See the attached *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*, which defines adequate consideration as follows:

It is easier to state what the standard "adequate consideration" does not mean than to specify in detail what it does. It does not mean that the review committee should substitute its own judgment for that of members of the department on the merits of whether the candidate should be reappointed or given tenure. The conscientious judgment of the candidate's departmental colleagues must prevail if the invaluable tradition of departmental autonomy in professional judgments is to prevail. The term "adequate consideration" refers essentially to procedural rather than to substantive issues: Was the decision conscientiously arrived at? Was all available evidence bearing on the relevant performance of the candidate sought out and considered? Was there adequate deliberation by the department over the import of the evidence in light of the relevant standards? Were irrelevant and improper standards excluded from consideration? Was the decision a *bona fide* exercise of professional academic judgment? These are the kinds of questions suggested by the standard "adequate consideration."

The handbook appears to be silent with regard to policy affording faculty members denied reappointment the right to ask for a written statement of

reasons. See Regulations 2e and 2f of the *Recommended Institutional Regulations* and page 19 of the attached *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*. See also the attached “Furnishing Reasons for a Decision against Reappointment: Legal Considerations” by former Committee A chair and Duke law professor William Van Alstyne. We consider the absence of a policy affording reasons for nonreappointment to be a serious deficiency.

My general recommendation is to reorganize sections VII. A. B., X. (Policy on Academic Tenure) G. and H., and XVI. (Reduction in Force) into three sections –

1. Dismissal procedures
2. Termination of appointments by the institution for reasons of programmatic change, or for termination due to financial exigency (for AAUP-recommended standards on termination of an appointment by the institution for program elimination, and for financial exigency, see *RIR* 4.c. and 4.d.)
3. Renewal or nonrenewal of faculty appointments

N.B. With respect to termination on grounds of disability, see our updated recommendations on cause relating to physical or mental disability, see *Accommodating Faculty Members Who Have Disabilities*, in *Bulletin of the American Association of University Professors* (special issue of *Academe*), July–August 2012: 30–43 (<http://www.aaup.org/report/accommodating-faculty-members-who-have-disabilities>)

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Graduate School of Management

2.1.3 Non-Regular Appointments

This section states, “No number of renewals of a non-regular appointment created a right to further renewals or to a decision concerning tenure.”

According to our *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*, “except for special appointments clearly designated at the outset as involving only a brief association with the institution, all full-time

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faculty appointments are either with continuous tenure or probationary for tenure." The 1940 *Statement of Principles on Academic Freedom and Tenure* provides, "After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause. . . ." The AAUP therefore does not favor retention of full-time faculty members beyond seven years of service without affording them the due-process protections that accrue with tenure. Therefore, we strongly encourage institutions to limit strictly their reliance upon contingent faculty appointments.

This section of the handbook, in addition, is silent with respect to procedures available to non-tenure-track faculty in the event of nonrenewal of an appointment. See my comments in this regard, college of law handbook, Section VII.A.

4.1 Maximum Period of Regular Appointment Without Tenure

See comments above on college of law handbook, Section IV.B.

4.9.1 Termination of Appointments and 4.9.2. Reduction in Force

See my comments above college of law Sections VII. A. B., X. (Policy on Academic Tenure) G. and H., and XVI. (Reduction in Force) with respect to the differences among policies related to termination (for reasons of financial exigency or program discontinuance), and dismissal for cause.

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I hope these comments and documents are helpful to you and your colleagues.

Sincerely,



Anita Levy, Ph.D
Senior Program Officer